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## BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

COMMISSIONERS**DOCKETED**

KRISTIN K. MAYES, Chairman  
GARY PIERCE  
PAUL NEWMAN  
SANDRA C. KENNEDY  
BOB STUMP

MAY - 5 2009

DOCKETED BY

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IN THE MATTER OF THE JOINT APPLICATION  
OF AMERICATEL COPORATION, MATRIX  
TELECOM, INC. AND STARTEC GLOBAL  
OPERATING COMPANY FOR APPROVAL TO  
PLEDGE THEIR ARIZONA ASSETS PURSUANT  
TO A.R.S. § 40-285.

DOCKET NO. T-03517A-09-0015  
DOCKET NO. T-03228A-09-0015  
DOCKET NO. T-20522A-09-0015

DECISION NO. 70982**ORDER**

Open Meeting  
April 28 and 29, 2009  
Phoenix, Arizona

**BY THE COMMISSION:**

Having considered the entire record herein and being fully advised in the premises, the  
Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

**FINDINGS OF FACT**

1. On January 20, 2009, Americatel Corporation ("Americatel"), Matrix Telecom, Inc. ("Matrix"), and Startec Global Operating Company ("Startec," and together with Americatel and Matrix, the "Applicants") filed with the Arizona Corporation Commission ("Commission") an application for approval to pledge their Arizona assets as security for certain debt financing arrangements up to \$80 million pursuant to A.R.S. § 40-285 ("Application").

2. The Applicants caused notice of the Application to be published in the *Arizona Business Gazette* on February 13, 2009.

3. On March 27, 2009, the Commission's Utilities Division Staff ("Staff") filed a Staff Report recommending conditional approval of the request for encumbrance of assets.

4. On April 2, 2009, the Applicants filed their Response to Staff Report and Request for Expedited Treatment ("Response").

1           5.       Americatel is a Delaware corporation authorized by the Commission to provide  
2 competitive intrastate telecommunication services under Decision No. 61054 (August 6, 1998).

3           6.       Matrix is a Texas corporation authorized by the Commission to provide competitive  
4 resold local exchange and competitive classification services under Decision No. 68343 (December  
5 9, 2005), competitive resold interexchange except local exchange telecommunication services, under  
6 Decision No. 65926 (May 16, 2003), and facilities-based local exchange telecommunication services,  
7 under Decision No. 69944 (October 16, 2007).

8           7.       Startec is a Delaware corporation. The Commission granted a Certificate of  
9 Convenience and Necessity ("CC&N") to Startec Global Licensing Company, a former sister  
10 company of Startec, to provide resold interexchange telecommunication services in Arizona under  
11 Decision No. 63370 (February 16, 2001). In a *pro forma* restructuring, Startec became the holder of  
12 that CC&N pursuant to Decision No. 69573 (May 21, 2007).

13          8.       The Applicants are affiliated companies. MTAC Holding Corporation ("MTAC"), a  
14 Delaware corporation, is the parent company of Americatel and Matrix. MTAC is also the parent  
15 company of Startec Global Communications Corporation ("SGCC") and Startec Global Canadian  
16 Holding Company ("SGCHC").

17          9.       Americatel, Matrix, and Startec do business in most other states in addition to  
18 Arizona.

19          10.      Staff states that there are no compliance issues with any of the Applicants.

20          11.      As of January 16, 2009, the Applicants entered into certain long-term credit facility  
21 agreements and related documents in order to restructure their debt ("Facility Agreements"). The  
22 Facility Agreements consist of a senior secured second lien facility for \$40 million and a senior  
23 secured third lien facility, also for \$40 million. Both Facility Agreements are expected to mature in  
24 five years.

25          12.      The borrowers under the Facility Agreements are the Applicants, MTAC, SGCC, and  
26 SGCHC ("Borrowers"). The Borrowers' obligations under the Facility Agreements will be secured  
27 by substantially all of the assets of the Applicants, subject to an existing senior first lien facility  
28 approved by the Commission in Decision No. 70184 (February 27, 2008).

1       13.     According to the Applicants, their obligations under the Facility Agreements will not  
2 be consummated until all required regulatory approvals are obtained.

3       14.     The Applicants assert that participation in the financing arrangements will not result in  
4 any changes to their management, day-to-day operations or provision of service, and will be entirely  
5 transparent to their customers.

6       15.     The Applicants also assert that the proposed financing will serve the public interest in  
7 that it will allow the Applicants to introduce new services in Arizona, allow consumers to benefit  
8 from competitive services and will promote competition.

9       16.     Staff notes that Arizona Administrative Code ("A.A.C.") R14-2-804(B) provides that  
10 a Class A Utility may not obtain a financial interest in any affiliate not regulated by the Commission,  
11 or guarantee or assume the liabilities of such an affiliate without Commission approval.<sup>1</sup> Under  
12 A.A.C. R-14-2-804(C), the Commission must review the transaction to determine if it would impair  
13 the financial status of the public utility, otherwise prevent it from attracting capital at fair and  
14 reasonable terms, or impair the ability of the public utility to provide safe, reasonable, and adequate  
15 service.

16       17.     Staff determined that under A.A.C. R14-2-804, the proposed transactions will not  
17 impair the Applicants' financial status, prevent them from attracting capital at fair and reasonable  
18 terms, or impair the ability of the Applicants to provide safe, reasonable and adequate service.

19       18.     A.R.S. § 40-301 provides that foreign public service corporations providing  
20 communications services within the state whose physical facilities are also used in providing  
21 communications service in interstate commerce are not required to obtain authorization from the  
22 Commission to issue stocks and stock certificates, bonds, notes, and other evidences of indebtedness  
23 payable at periods of more than twelve months. Because the Applicants are each a foreign public  
24 service corporation whose physical facilities are also used in providing communications services in  
25 interstate commerce, pursuant to A.R.S. § 40-301(D), the Applicants' proposed financing is exempt  
26 from Commission approval.

27       <sup>1</sup> The Applicants assert that they are not Class A Utilities. As such, they state that they are not subject to the requirements  
28 of A.A.C. R14-2-804(B). Nevertheless, Staff analyzed the Application and made a determination pursuant to A.A.C. R14-  
2-804(B) that the transaction will not impair the Applicants' financial status.

1           19.     However, A.R.S § 40-285 requires public service corporations to obtain Commission  
2 authorization to encumber certain utility assets. According to Staff, the statute serves to protect  
3 captive customers from a utility's disposition of assets that are necessary for the provision of service,  
4 thereby preventing any service impairment due to disposal of critical assets necessary to provide  
5 service.

6           20.     Based on its review of the proposed transaction, Staff determined that the pledge of  
7 the Applicants' Arizona assets would not impair the availability of service to the customers since the  
8 Applicants provide competitive services that are available from alternative service providers.  
9 However, Staff recommends that, because customers who have prepaid for service or made deposits  
10 may have exposure to losses, any authorization for encumbrances should include customer protection  
11 for prepayments and deposits.

12          21.     Staff recommends approval of the Applicants' request to pledge assets as a guarantee  
13 or to provide other forms of security for \$80 million in debt subject to the condition that all Arizona  
14 customer deposits and prepayments be excluded from encumbrance or, in the alternative, be secured  
15 by a bond or an irrevocable sight draft letter of credit, which is not included in the pledged collateral.

16          22.     Staff recommends that the Applicants be authorized to engage in any transactions and  
17 to execute or cause to be executed any documents necessary to effectuate the authorizations requested  
18 in the Application.

19          23.     Staff also recommends that the Applicants file with Docket Control, as a compliance  
20 item in this matter, a copy of the loan documents within 60 days of the execution of any financing  
21 transaction authorized herein.

22          24.     In their Response, the Applicants requested that, rather than filing copies of the  
23 executed loan documents with Docket Control, the Applicants be permitted to file the documents  
24 with Staff as they contain highly confidential information. The Applicants also request that Staff's  
25 recommendation be modified to require that the documents be submitted to Staff within 60 days of  
26 the effective date of the Decision in this matter since the documents have already been executed and  
27 the Applicants are awaiting Commission approval before the encumbrance takes effect.

28          25.     The Response indicates that the Applicants have discussed these modifications with

1 Staff and Staff has no objections, and the Applicants intend to enter into a protective agreement with  
2 Staff to address the confidentiality of the documents.

3 26. The requested modifications are reasonable and shall be adopted. The Applicants  
4 should also file with Docket Control simultaneously with the provision of the documents to Staff, as a  
5 compliance item in this docket, a notice stating that the executed loan documents were submitted to  
6 Staff in compliance with this Decision.

7 27. Staff's recommendations, as modified herein, are reasonable and should be adopted.

8 **CONCLUSIONS OF LAW**

9 1. Applicants are a public service corporation within the meaning of Article XV of the  
10 Arizona Constitution, A.R.S. § 40-285.

11 2. The Commission has jurisdiction over the Applicants and the subject matter of the  
12 application.

13 3. Notice of the Application was given in accordance with the law.

14 4. The encumbrance approved herein pursuant to A.R.S. § 40-285 is for the purposes  
15 stated in the Application and is reasonably necessary for those purposes.

16 5. Pursuant to A.A.C. R14-2-804 the proposed transactions will not impair the financial  
17 status of the Applicants, prevent them from attracting capital at fair and reasonable terms, or impair  
18 the ability of the Applicants to provide safe, reasonable and adequate service.

19 6. Pursuant to A.R.S. § 40-301, Commission approval of the financing is not required.

20 **ORDER**

21 IT IS THEREFORE ORDERED that the application by Americatel Corporation, Matrix  
22 Telecom, Inc., and Startec Global Operating Company for authorization to encumber assets as  
23 security for debt financing up to \$80 million as provided for herein, shall be, and hereby is, granted,  
24 subject to the condition that either all Arizona customer deposits and prepayments are excluded from  
25 encumbrance or, in the alternative, are secured in the amount of the customer deposits and  
26 prepayments either by a performance bond or an irrevocable sight draft letter of credit, which are not  
27 included in the pledged collateral.

28 IT IS FURTHER ORDERED that Americatel Corporation, Matrix Telecom, Inc., and Startec

1 Global Operating Company shall, within 60 days of the effective date of this Decision, file with  
2 Docket Control as a compliance item in this docket, either a statement that all Arizona customer  
3 deposits and prepayments are excluded from encumbrance, or copies of the performance bond or  
4 irrevocable sight draft letter of credit in the amount of the customer deposits and prepayments, and  
5 provide the original performance bond or irrevocable sight draft letter of credit to the Commission's  
6 Business Office for safekeeping.

7 IT IS FURTHER ORDERED that Americatel Corporation, Matrix Telecom, Inc., and Startec  
8 Global Operating Company are hereby authorized to engage in any transactions and to execute or  
9 cause to be executed any documents in order to effectuate the authorizations granted herein.

10 IT IS FURTHER ORDERED that Americatel Corporation, Matrix Telecom, Inc., and Startec  
11 Global Operating Company shall provide to the Utilities Division within 60 days of the effective date  
12 of this Decision, copies of the executed loan documents.

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1 IT IS FURTHER ORDERED that Americatel Corporation, Matrix Telecom, Inc., and Startec  
2 Global Operating Company shall file with Docket Control simultaneously with the provision of the  
3 documents to Staff, as a compliance item in this docket, a notice stating that the executed loan  
4 documents were submitted to Staff in compliance with this Decision.

5 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

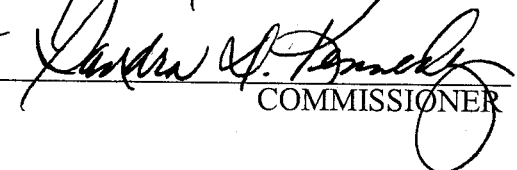
6 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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9 CHAIRMAN

  
COMMISSIONER

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11 COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER

13 IN WITNESS WHEREOF, I, MICHAEL P. KEARNS, Interim  
14 Executive Director of the Arizona Corporation Commission,  
15 have hereunto set my hand and caused the official seal of the  
16 Commission to be affixed at the Capitol, in the City of Phoenix,  
17 this 5TH day of MAY, 2009.

18   
19 MICHAEL P. KEARNS  
20 INTERIM EXECUTIVE DIRECTOR

21 DISSENT \_\_\_\_\_

22 DISSENT \_\_\_\_\_

1 SERVICE LIST FOR: AMERICATEL CORPORATION, MATRIX TELECOM, INC.  
2 and STARTEC GLOBAL OPERATING COMPANY

3 DOCKET NOS.: T-03517A-09-0015, T-03228A-09-0015, and T-20522A-09-  
4 0015

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